



VI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश                                                                                                                                                                                                                                                                                                                                                                                                                                   | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश                                                                        |
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|                                    | <b>HIGH COURT OF CHHATTISGARH, BILASPUR</b><br><b>CRIMINAL APPEAL NO. 1776 OF 2000</b>                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                  |
|                                    | <b><u>DIVISION BENCH</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                          | <b><u>HON'BLE SHRI L.C. BHADOO, &amp;<br/>HON'BLE SHRI DHIRENDRA MISHRA,<br/>JJ</u></b>                                          |
|                                    | <b><u>APPELLANT</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                               | Etwaram,<br>S/o Matwar Uraon,<br>Aged 45 years,<br>Occupation - Agriculture,<br>R/o Khedama, P.S. Lailunga,<br>District Raigarh. |
|                                    | <b><u>RESPONDENT</u> :</b>                                                                                                                                                                                                                                                                                                                                                                                                                            | <b><u>Versus</u></b><br>State of Madhya Pradesh,<br>Through : P.S.-Lailunga,<br>District Lailunga.                               |
|                                    | Present<br>Mr. Abhay Tiwari, counsel for the accused/appellant.<br>Mr. Ashish Shukla, Additional Public Prosecutor for<br>the State/respondent.                                                                                                                                                                                                                                                                                                       |                                                                                                                                  |
|                                    | <b><u>ORAL JUDGMENT</u></b><br><b>(17<sup>th</sup> July 2007)</b>                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                  |
|                                    | <b><u>Per L.C. Bhadoo, J</u></b><br><br>This appeal is directed against the judgment of conviction<br>and order of sentence dated 30 <sup>th</sup> May 2000 passed by II Additional<br>Sessions Judge, Raigarh (M.P.) in Sessions Trial No. 19/99<br>whereby the learned Additional Sessions Judge after holding the<br>accused/appellant guilty under Section 302/34 of the IPC,<br>sentenced him to undergo imprisonment for life and to pay a fine |                                                                                                                                  |

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## आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                    | <p>of Rs. 500/-, in default of payment of fine to further undergo two months' R.I.</p> <p>2. Case of the prosecution in brief is that on 21.6.1998 Dhansingh (since deceased) was at his residence. At about 7-8 pm. in the evening Mangalsai (absconded accused) and Etwa Uraon, the present accused/appellant, came to the house of Dhansingh and asked Dhansingh "let us go to forest to bring wood and we will also consume liquor". At that time Rameshwar was also standing outside the house, therefore, Dhansingh refused to accompany them but Mangalsai and Etwa insisted and took Dhansingh with them. In the night the accused persons, Dhansingh and Rameshwar consumed liquor in the house of Mangal. After consuming liquor Rameshwar (PW-1) left for his house. Deceased Dhansingh stayed back there. In the night Adhnibai (PW-2), mother of accused Dhansingh, enquired from Mangalsai and Etwa about Dhansingh, on which they replied that Dhansingh had already come a little earlier and after some time the accused persons left the place. On the next day, dead body of Dhansingh was found in the water of dam, there was a towel around his neck. Thereafter, the accused persons went to Sonuram (PW-7) and they were searching for Sarpanch. In front of Sonuram (Pw-7) both of them made extra judicial confession that they have committed a mistake as they have killed one person. Merg intimation (Ex.P/1) was given by Adhnibai (PW-2) in the</p> |                                                           |

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## आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                    | <p>police station on 23.6.1998 and based on that, First Information Report (Ex.P/2) was registered. Sub Inspector Mulchand Tiwari (PW-11) left for the scene of occurrence and after giving notice (Ex.P/8-A) to the Panchas under Section 175 of the Cr.P.C., prepared the inquest (Ex.P/9-A) on the dead body of Dhansingh. J.P. Choudhary (PW-4), Patwari prepared the site plan (Ex.P/4). Dead body was sent for postmortem examination to Primary Health Centre, Lailunga where Dr. S.N. Upadhyaya (PW-5) conducted postmortem on 23.6.1998 and prepared the postmortem report Ex.P/7, in which the doctor opined that cause of death was asphyxia by strangulation and it was homicidal in nature. After completion of investigation, the charge sheet was filed in the Court of Judicial Magistrate First Class, Gharghoda, who in turn committed the case to the Sessions Judge, Raigarh from where learned Additional Sessions Judge received the case on transfer for trial.</p> <p>3. Prosecution in order to establish the charge against the accused persons examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime in question. As accused Mangalsai was absconding since beginning, therefore, charges were framed against the present accused/appellant only.</p> |                                                           |

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## आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                    | <p>4. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentence the accused/appellant as aforementioned.</p> <p>5. We have heard Mr. Abhay Tiwari, learned counsel appearing for the accused/appellants and Mr. Ashish Shukla, learned Additional Public Prosecutor for the State/respondent.</p> <p>6. In the instant case, there is no ocular or direct evidence to connect the accused/appellant with the crime in question. The prosecution has tried to establish its case based on the circumstantial evidence. The circumstances relied upon by the prosecution are as follows:</p> <p>(i) that the accused/appellant Etwa along with accused Mangalsai took deceased Dhansingh with them from the residence of Dhansingh in the fateful night; and</p> <p>(ii) that the accused persons made extra judicial confession before PW-7 Sonuram.</p> <p>7. As far as the first circumstances is concerned, Adhribai (PW-2) mother of the deceased, has stated that on the fateful day Rameshwar and Mangalsai came to her house and took Dhansingh along with them. In the night Etwa and Mangalsai came to her</p> |                                                           |

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## आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                    | house and demanded water, therefore, she gave water to them in a tumbler. When she enquired from them about her son Dhansingh, they said that "he is coming". In paragraph 4 of her evidence she has stated that on enquiry Mangalsai informed her that her son is coming but he did not come. In cross-examination she has stated that relation between Dhansingh, Mangalsai and Etwa were not inimical. This witness has not stated that her son accompanied the present accused/appellant. She has stated that her son Dhansingh went along with Rameshwar and Mangalsai. PW-3 Rasmati, wife of Etwa, has also stated that accused Mangalsai came to her house and took her husband. She has not stated that her husband went along with present accused/appellant. PW-1 Rameshwar who is said to have been accompanied by accused persons Etwa, Mangalsai and deceased Dhansingh, has stated that in the fateful night he along with Mangalsai and Dhansingh consumed liquor at the residence of Mangalsai and thereafter, he left for his residence. Dhansingh stayed at the residence of Mangalsai. He has also not stated about the presence of accused/appellant Etwa when they consumed liquor at the house of Mangalsai. Therefore, in view of above evidence, it is clear that the prosecution has not been able to establish that in the first instance Dhansingh left with Mangalsai and Etwa when he was alive. Even as per the evidence of Rameshwar when he along with deceased Dhansingh and his brother-in-law Mangalsai consumed |                                                           |

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## आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                    | <p>liquor at the residence of Mangalsai, Etwa was not there. Therefore, there is no evidence with regard to last seen theory i.e. the accused/appellant Etwa was last seen with deceased Dhansingh while he was alive.</p> <p>8. As far as the second circumstance that the present accused/appellant along with Mangalsai made extrajudicial confession before PW-7 Sonuram Bhagat is concerned, this witness has stated that accused/appellant Etwa and Mangalsai came to his shop and they were enquiring about the Sarpanch of Jambahar. This witness has been declared hostile and cross-examined by the A.G.P. In the cross-examination he stated that when he asked the accused persons as to why they were enquiring about the Sarpanch, on which accused Etwar Sai said that they have committed mistake as they have murdered one person and beyond that they did not utter any word and left for Lailunga. In paragraph 5 of the cross-examination this witness has stated that the accused persons did not disclose to him as to whom they murdered, how they murdered nor did they disclose as to when they murdered. Therefore, based on this extra judicial confession only, it would not be safe to connect accused/appellant Etwa with the crime in question because in this case the extra judicial confession which is said to have been made by accused persons before Sonuram Bhagat (PW-7) is not corroborated in material particulars by any other evidence.</p> |                                                           |

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक<br>तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार<br>के अन्तिम आदेश |
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|                                    | <p>9. In order to convict the accused based on the extra judicial confession the most important requirement of law is that the confession must be voluntarily and true. As far as truthfulness of the said extra judicial confession is concerned, in the case in hand as per evidence of Sonuram Bhagat the accused persons neither named the person to whom they murdered nor did they disclose about the manner in which they committed murder or time and place of the commission of murder. The whole evidence of this witness is ambiguous and there is no clear legal admissible evidence to the effect that accused/appellant Etwa along with Mangalsai made extra judicial confession regarding commission of murder of Dhansingh by them. Moreover, there is also no other evidence on record to connect the accused/appellant Etwa with the crime in question, as such in the absence of legally admissible evidence against the accused/appellant, he cannot be held guilty for the offence punishable under Section 302/34 of the IPC and sentence imposed under that section cannot be sustained.</p> <p>10. In the result, the appeal succeeds. Conviction of the accused/appellant under Section 302/34 of the IPC and sentence passed thereon, are set aside. He is acquitted of the above charges. He is directed to be set at liberty forthwith if not required in any other case.</p> |                                                           |
| k/                                 | <p>Sd/-<br/>L.C. Bhadoo<br/>Judge</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>Sd/-<br/>Dhirendra Mishra<br/>Judge</p>                |

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